

LABOUR DEPARTMENT

The 2nd September, 1982

No. 9(1)82-6Lab-7508.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 141 of 1981

between

SHRI SUDERSHAN KUMAR, SEHGAL WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S HARYANA ROADWAYS, GURGAON

Present :

Shri S.K. Goswami for the workman.

Shri K.L. Piplani for the respondent.

AWARD

This reference No. 141 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana *vide* his order No. ID/GGN/183-80/18493, dated 2nd April, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Sudershan Kumar Sehgal, workman and the respondent management of M/s. Haryana Roadways, Gurgaon. The terms of the reference was :—

Whether the termination of services of Shri Sudershan Kumar Sehgal was justified and in order ?
If not, to what relief is he entitled ?

Notices were issued to the parties after receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the applicant was appointed as Store Boy on 7th October, 1969. The respondent issued a false and concocted charge-sheet dated 14th September, 1973 and the enquiry was held arbitrarily improper and illegal manner. The enquiry officer gave incorrect findings on which the termination has been made. The charges never stood proved. The enquiry officer being an officer of the respondent department could not give findings adverse to the interest of the department. The applicant was victimized and finally terminated on 5th September, 1975. The respondent stopped one increment in respect of charge No. 2 in the charge-sheet by way of punishment. The claimant filed an appeal against the order of stoppage of increment. The decision of which was never communicated to the workman prior to his termination. The charge No. 2 was wrongly decided by the Enquiry Officer. The first charge in the chargesheet was that he was absent from duty on 13th April, 1973 which was a holiday being Baisakhi. The enquiry officer in his findings did not prove the charges No. 3 and 4. The findings on charges No. 1 and 2 are against the facts on the file. So the workman is entitled for his reinstatement with continuity of service and full back wages.

The case of the respondent according to the written statement is that the respondent employed the workman and valid chargesheet was given to him. The workman replied the charge-sheet and domestic enquiry was held against him according to law, and full opportunity was given to defend himself. The enquiry officer give the findings according to the facts on the file and give finding after complying with all principles of natural justice. It is denied that one increment in respect of 2nd charges was already stopped. The workman never produced any evidence nor made any statement before the enquiry officer to this effect which is after thought. It is also denied that the appeal was filed against the order of stoppage of increment. So the workman was terminated after a fair and proper enquiry against the workman in which he fully participated and gave his defence witnesses.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the enquiry held by the respondent was in order and not violated the principle of natural justice ? If so, to what effect ?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (3) Relief.

My findings on issues are as under :-

Issue No. 1.—The representative of the respondent argued on this issue that the respondent has put up original enquiry file and Ex. M-1 and M-2 are the charge-sheet against the workman for which the workman replied which is Ex. M-3. Ex-M 5 to M-8 are the copy of report given to the workman. Ex. M-13 is the show cause notice and Ex. M-14 is the reply of the show cause notice and Ex. M-15 is the termination letter based on previous record of the workman and the enquiry findings. He argued that there was no enmity with the workman or any official of the respondent which has not stated by the workman anywhere. The enquiry officer gave his findings in respect of charges Nos. 3 and 4 not proved because these were not proved on the file and so gave the finding that they are not proved and as per enquiry file the charges No. 1 and 2 are proved against the workman and so gave the findings against the workman according to facts on the file. He further argued that the enquiry proceedings M-16 clears the whole position of the enquiry that the respondent produced as many as four witnesses against the workman and closed their case and the workman produced two witnesses in his defence and closed his case and signed the same. The workman cross-examined all the witnesses of the respondent but even then he could not prove that he was not guilty of the charge and the findings of the enquiry officer is according to the facts and findings before him. He further argued that in the claim statement he states that on 13th April, 1973 it was a Baisakhi holiday and workman was enjoying the leave. But in the reply he has stated that he attended the duty on 13th April, 1973. The two contrary facts of the workman cannot be believed. He further argued that the workman was terminated on 5th September, 1975 after a valid enquiry and there is no allegation of the workman on the enquiry proceedings. The workman did not object any proceedings during the enquiry, and did not file any application of objection before the enquiry officer and participated the enquiry throughout, so it cannot be said that the enquiry was not fair and proper.

The representative of the workman argued on this issue that the workman joined the services on 7th October, 1969 and was working properly with utter satisfaction of his superior officers. A false and concocted charge-sheet was issued to the workman on 4th September, 1973. The workman replied the charge-sheet denying all the charges which is Ex. M-3. The respondent appointed an official of the respondent as enquiry officer. The enquiry officer cannot go beyond the interest of the respondent. So he gave the findings of the enquiry proceedings against the workman. The enquiry officer did not give any opportunity to the workman to defend his case. The enquiry proceedings and findings of the enquiry was not given to the workman and he denied the opportunity. The order of termination based on a false and concocted charge-sheet is also not valid in the eye of law. The respondent even did not produce the attendance register for the absence of the workman on 13th April, 1973 which was called by the workman clearly shows that there was some *mala fide* for not producing the register. The same register was not produced before the enquiry officer to show whether it was a holiday or a working day. 13th April, 1973 was a holiday and the workman was enjoying the holiday which was a gazetted holiday and they marked absent wrongly. About the charge No. II there is no specific order on the file that what the workman has to do about the II charge of putting the old record a proper manner. This all shows that the findings of the charge-sheet were not properly given by the enquiry officer and the enquiry is not fair and proper and violated the principles of natural justice.

After hearing the arguments of both the sides I am of the view that the enquiry conducted by the enquiry officer was according to the principles of natural justice. The workman has not alleged about the integrity of the enquiry officer. The enquiry officer has given the full opportunity to the workman which is clear from the proceedings of the enquiry. The workman demanded time to produce his defence witness which was given to him and opportunity was not denied. The workman closed his defence and signed for the same. He has cross-examined all the witnesses of the respondent before the enquiry officer. The enquiry officer has given the findings on two charges against the respondent which was not proved against the workman. So nothing can be said against the enquiry officer who has worked in a proper manner according to the principles of natural justice. The workman has stated that false and concocted charge-sheet was issued to the workman but he has not stated any reason why the such false charge-sheet was given to him. He has not alleged anything against any officer of the company or enmity without which it can not be said that a false charge-sheet was given to the workman. So I hold that a fair and proper enquiry was held against the workman and issue is decided against the workman and in favour of the respondent.

Issue Nos. 2 and 3.—After deciding the issue No. 1 in favour of the respondent, I feel no necessity to discuss all these issues in details. The respondent terminated the services of the workman, after considering the findings of the enquiry officer and the previous record of the workman. So no relief can be given to the workman and the issues are decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 1st July, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1605, dated 15th July, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.